THE ANGLO-SAXON COURTS OF LAW.

THOSE who are familiar with Mr. Adams's essay[1] on the above subject may deem the present article little more than superfluous. However, a careful reading of his work and that of others, not excluding Dr. Stubbs, has led me to believe that the fundamental questions have not yet been cleared up. There is still uncertainty as to the exact nature and extent of the jurisdiction of the public Anglo-Saxon courts and as to their composition. Fully aware that scantiness of material renders the investigation difficult, I hope, nevertheless, to throw some new light on the subject.

I.

Was there a clearly-defined tribunal in Anglo-Saxon times which might be called a king's court? There is no distinct mention of any as such in our sources. Still we have, in a few cases, indications of a direct intervention on the part of the king. In a curious document Ælfred is spoken of as ordering an arbitration to settle a dispute about land.[2] The plaintiff, not being satisfied with the decision, wished to see it ratified by the king. The parties then went into Ælfred's presence. He confirmed the previous decision, and declared that the defendant should be admitted to the oath on a certain day. And this term was kept. It is clear that this was not strictly a law case. Besides, the whole situation is too vague to admit of drawing a conclusion therefrom. But there is extant the record of a litigation in which King Eadgar figures as a judge at the head of his "þenning-manna gemot" in London.[3] Some

[1] H. Adams: The Anglo-Saxon Courts of Law: Essays in Anglo-Saxon Law, pp. 1–54.

[2] Kemble, Cod. Dipl., III, 328 (the reference is always to the number of Kemble's documents). *Cf.* Thorpe, Dipl. Anglic., pp. 169–174.

[3] Kemble, C. D., VI, 1258.

stolen charters were adjudged to the plaintiff. However, there seems to be no reason to believe that we have here a king's court, but rather the witenagemot acting as the highest court of the kingdom. The relevant words of the document are :

This was at London, where was King Eadgar and Archbishop Dunstan and Bishop Æthelwold and Bishop Ælfstan and the other Ælfstan and Alderman Ælfere and *many of the king's witan.*[1]

Æthelred III, 11, where we read of the exclusive jurisdiction of the king over king's thegns,[2] probably refers to the action of the witenagemot. If the first part of the document cited shows us the king invested with but an undeveloped power of interference, the sequel reduces that power to a shadow. For on the king's death the suit was renewed in the shiremoot, which reversed the previous decision.

It would seem, indeed, that the witenagemot's decision was binding only where the parties had previously promised to abide by it.[3] This is clearly illustrated by the record of a land grant "before King Æthelred."[4] Although witnessed by the king and others, a third party who was concerned would not comply unless it were carried to the shiremoot ; to which the king refers it by his seal (*insegel*).[5] Another document tells

[1] Essays in Anglo-Saxon Law, p. 348. That witenagemots were not unfrequently held in London is proved by Kemble's list: Kemble, C. D., nos. 159, 196, 361, 528, 580, 702; Leges Eadmundi, Schmid, p. 172; Anglo-Saxon Chron., A.D. 1012, 1016, 1047, 1048, 1050, 1055, 1065; Florence of Worcester, A.D. 1044.

[2] And nan man nage nane socne ofer cynges þegen, buton cyng sylf. *Cf.* Spence, Equit. Jurisdiction, p. 76 (1846).

[3] Adams, p. 26.

[4] Kemble, C. D., III, 693.

[5] Compare a suit about land in the Historia Eliensis (ed. T. Gale: Scriptores xx, vol. ii, p. 469, c. x). Here the decision of a witenagemot (*generale placitum*) is afterwards affirmed by a shiremoot. Laughlin, in the Essays on Anglo-Saxon Law, p. 380, note 1, considers the cases in the Hist. Elien. and the Hist. Ramsiensis quite worthless as examples of Anglo-Saxon law — probably monkish forgeries of the twelfth century. Herein he goes too far. To be sure, there are many suspicious inconsistencies in the narrative of both histories, but that ought not to prompt us to condemn them categorically as forgeries. There is little in the cases cited which is inconsistent with the contemporaneous records we possess, however vitiated they have become through translation and the adoption of

us that in the reign of Eadgar a thief, having forfeited his land to the king, appealed to him for judgment. Then the "witan of the Mercians" allowed the confiscation unless the defendant should pay his *wer* to the king.[1] Here again, there is no picture of a king's court brought before our minds, but rather that of a king sitting in his local witenagemot.[2]

It was clearly the policy of the Anglo-Saxon kings to insist that the local courts should exercise their functions. Consequently we find that by Eadgar's laws recourse to the king is made very difficult. One of them directs that no one shall carry his suit before the king unless justice has been refused him at home. If the law is too severe, he is to seek amelioration at the king's hand.[3] The first part of this law had been promulgated by Æthelstan, and was taken up in Cnut's code.[4] As a natural corollary it followed that the king had the power of instituting or sanctioning proceedings in specific cases by writ.[5] This prerogative, so characteristic of the Anglo-Norman procedure, does not seem to have been fully developed under the Anglo-Saxon kings. At least there are but two or three illustrations extant, to my knowledge, and these fall in the reigns of Æthelred and Cnut.[6] There are likewise instances on record in which a king intercedes for one party, while his successor intercedes for the other.[7]

Anglo-Norman legal terminology. The present poor edition of the history of Ely and its late origin warn us to use it with caution, and not as primary evidence. As the additional cases there cited do not materially affect my results, I have refrained from using them except in the present instance.

[1] Thorpe, pp. 205–209.

[2] "Ða gesohte Æðelstan Eadgar cyng and bæd domes.
Ða ætdemdon him *Myrcna witan land.*"

[3] Eadgar, III, 2.

[4] Æthelstan, II, 3; Cn., II, 17.

[5] Kemble, Saxons, II, p. 46.

[6] Kemble, C. D., III, 693 (see *ante*, p. 133, note 4). C. D., IV, 929: The news of a pending suit reaching the king, he sends *his gewrit and his insegel* to the Archbishop of Canterbury, and bids him to have the suit tried in the shiremoot. C. D., IV, 755, records a litigation in the shiremoot to which Tofig Pruda (probably Tofig, the sheriff of Somerset, of C. D., IV, 821) came "on the king's errand." The interpretation of this phrase decides whether the charter belongs to this category or not.

[7] Thorpe, pp. 201–204.

If, then, the sources of Anglo-Saxon legal history will not permit us to speak of a clearly-defined king's court, we get, however, occasional glimpses of the king as arbiter over the decisions of the local public courts of his kingdom. This and no more can also be deduced from the concluding chapter of Asser's *Life of Ælfred*,[1] which, in somewhat rhetorical terms, declares the king to be the guardian of justice and equity as against the ignorance and oppression of the presiding officers of the public courts. Here we have the germ of an equitable jurisdiction which was to bear fruit under the centralizing state-system of the Anglo-Norman kings.

II.

To pass on to the public courts. The shiremoot is generally considered to have been competent to declare folkright in every suit.[2] This statement is based on a law of Eadgar which, however, names especially the *hundred court* as possessed of that competency, grouping all other courts under the general term gemot : "In the hundred, as in any other gemot, we ordain that folkright þe pronounced in every suit."[3] In the laws there are but three references to the scirgemot, or scire, *eo nomine*, in its judicial capacity.[4] One of these has reference to an action of distress, *i.e.*, in a civil plea. It reads :

> And let no man levy distress, either in the shire or out of the shire, before he has thrice demanded his right in the hundred. If at the third time he have no justice, then let him go at the fourth time to the shiregemot ; and let the shire appoint him a fourth term.[5]

The hundred court is here the important factor ; the shiremoot's action is merely supplementary. Another law also

[1] Mon. Hist. Brit., p. 497.

[2] Stubbs, C. H., I, p. 128 (4th ed.).

[3] Eadgar, I, 7.

[4] Eadgar III, 5 ; Cn., II, 19 ; Cn., II, 79. Eadgar, III, 5 (*cf.* Cn., II, 18) speaks of the jurisdiction of the shiremoot in the vaguest terms. Cn., II, 79, refers to defending land "be scire gewitnesse," where scire evidently stands for scirgemot.

[5] Cn., II, 19. That such a removal to another court was not an appeal in the modern sense, has been made clear by Adams, p. 24.

deals with the action of the shiremoot in litigations about land.[1]

These laws lead one to infer that the shiremoot dealt chiefly, if not exclusively, with civil pleas — an inference which is born out by the testimony of all the extant documents which record proceedings in the court of the shire.[2] The large number of offenses, great or small, which form the chief part of the Anglo-Saxon codes, were more easily and quickly disposed of in the more frequent sessions of a smaller judicial district than the shire — in the monthly meetings of the hundred courts. The demonstration of this fact I defer for the present to take up the question of the constitution of the county court.

The paragraph which Dr. Stubbs gives to this question (Chap. V, § 50) is misleading. He begins by saying that the sheriff held the shiremoot, according to Eadgar's law, twice a year. But the law distinctly says : Let them seek twice a year the shiremoot, and let there be present the bishop and the ealdorman, and there expound both the spiritual and the secular law

[1] Cn., II, 79. And he who has defended land, with the witness of the shire, let him have it undisputed during his day and after his day, to sell and to give to him who is dearest to him.

[2] Kemble, C. D., IV, 929. Convention about land in the shiremoot of East and West Kent, before 1011, (*supra*, p. 134, note 6). Thorpe, pp. 301–304.

Ibid., VI, 1334. Compact about land in court of Devon, 1040. Thorpe, 346–347.

Ibid., IV, 949. Similar compact in court of Hants. Hampton, 1048–1052.

Ibid., IV, 898. Similar case in shiremoot at Worcester, *temp.* Æthelr. (*et post?*). Thorpe, 375–378.

Ibid., IV, 732. Marriage-contract, *temp.* Cnuti (*Infra*, p. 138, note 1). Thorpe, 312–313.

Ibid., VI, 1358. Suit about testamentary land-grant in shiremoot of East and West Kent, before 988. Thorpe, 271–273.

Ibid., III, 693. Convention about land, before 995 (*supra*, p. 133, note 4). Thorpe, 288–290.

Ibid., IV, 755. Suit about land, before 1036 (*supra*, p. 134, note 6). Thorpe, 336–338.

Ibid., IV, 847. Writ to shiremoot of Kent, from which may be inferred the action of the shire in a land plea. *Temp.* Eadw. Conf.

The majority of the cases date from the last century of Anglo-Saxon rule. It may be well to state that none of the illustrations used in this article fall before the time of Ælfred. The prevalence of conventions among the cases cited warrants the observation of Adams (p. 26) that a compromise was always effected in the Anglo-Saxon courts when one was possible.

(Eadg. III, 5). To be sure, Dr. Stubbs adds that "although the ealdorman and bishop sat in it to declare the law secular and spiritual, the sheriff was the constituting officer." He refers to Kemble's *Saxons in England.* Here we read that the scirman or scirigman was, properly speaking, the holder of the county court, scirgemot or folcmot. In support of his view, Kemble refers to several charters in which the scirman, scirigman or scirgerefa appears.[1] But in no case does this officer distinctly appear as, "properly speaking, the holder of the county court." In the first case a certain Ælfeh had declared his testament before Archbishop Dunstan, and had deposited one copy with him. His widow broke the will, and

> the bishop proved ownership of all Ælfeh's bequest, at Erith, by witness of Ælfstan, Bishop of London, and all the family, and of that at Christ Church, and of Bishop Ælfstan of Rochester, and of Wufsie, the priest, who was shireman (sheriff), . . . and Wufsie, the shireman, received the oath for the king since he [the defendant] refused to receive it.[2]

From this it would appear that one of the bishops had been the presiding, and the sheriff merely the executive officer. This is more apparent in another case, where the Archbishop of Canterbury was clearly the presiding officer in the county court.

> When Bishop Godwine [of Rochester] came to the bishop's chair he found in the minster the same deeds [of church property] that his predecessor had, and therewith claimed the land. He proceeded then to lay claim to the land — until the suit became known to the king [Æthelred II]. When the charge was known to him, *he sent his writ and seal to the Archbishop Ælfric,* and bade him that he and his thanes in East Kent and in West Kent bring about a just settlement through accusation and answer.[3]

[1] Saxons, II, p. 158, n. 1. He refers also to the Laws of Ine; here, however, not only the scirman but *any other judge* (dema) is spoken of, nor is any gemot in particular mentioned.

[2] Kemble, C. D., VI, 1288. *Cf.* Essays in Anglo-Saxon Law, p. 350–354.

[3] Kemble, C. D., IV. 929; Essays, *etc.*, p. 360–361. The sheriff is mentioned as merely being present.

A third case records a transaction "before Cnut" in witness of Archbishop Lyfing, the convents of Christ Church and St. Austins Canterbury, and the sheriff.[1] Finally, one of the charters cited by Kemble lacks conclusive authority, as it is clearly spurious.[2]

All this evidence tends rather to undermine Kemble's generalization. Furthermore, he says that, while there is evidence that the sheriff sat without the ealdorman, there is no evidence that the ealdorman sat in judgment without the sheriff in the folkmot (meaning scirgemot, presumably).[3] The first of these statements is true, but the second is manifestly erroneous. We have records of transactions in the shiremoot in which the sheriff does not seem to have been present; at least he does not appear among the witnesses.[4] And his presence in the shiremoot seems by no means to have been taken for granted; for among the addressees of Eadward the Confessor's writs to that body, the sheriff is missing in the majority of cases, whereas the ealdorman (or earl, who superseded him) and the bishop always appear.[5]

[1] Kemble, IV, 732. The record has such a strong local coloring that we may infer that the matter, a marriage contract, was settled in the county court.

[2] C. D., IV, 872. A grant made with leave of King Æthelred is witnessed by Archbishop Ægelnoð (1020–1038); yet Thorpe, Dipl. Sax., p. 542, dates it 1000.

[3] Saxons, II, p. 158.

[4] Kemble, C. D., IV, 898; VI, 1334; III, 693; Earle, Handbook, p. 242.

[5] In the following list the sheriff is missing: Kemble, C. D., IV, 826–828, 830, 831–833, 841, 842, 845, 846, 848, 851–853, 855, 859, 860, 862, 864, 866, 868, 873, 876–878, 882, 884, 886–889, 892–894, 902, VI, 1319 (Cnut), 1343, 1345.

From 853 we learn that Toli[g] was sheriff of East Anglia. It is somewhat surprising that he appears without his official title in 874, 875, 880, 881, 883, 905, and 1342. But it is more significant that several writs of the same period addressed to the shiremoot of Norfolk, of Suffolk, of Norfolk and Suffolk together, or of East Anglia, of which Tolig was sheriff, should not contain his name or that of any other sheriff (nos. 852, 868, 873, 876–878, 882, 884).

In the following writs the sheriff, with or without his name, is one of the addressees: C. D., IV, 757 (Cnut), 829, 834–836, 837 (*cf.* 976), 839, 843, 849, 850, 853, 858, 863, 869–871, 874, 875, 879, 880, 881, 883, 885, 904, 905; VI, 1326 (Cnut). A few cases are doubtful, the name of one of the addressees appearing in the place usually filled by the name of the sheriff, but without his title. Such cases might come under the category of those writs in which Tolig, without his title, appears. In his case one writ gives us the clue. But in IV, 838, 840, 847, 854, VI, 1323, 1325, such a hint is not given.

What, then, was the position of the sheriff in the shiremoot? I am inclined to think that he acted as the assistant or proxy of the ealdorman, or later earl. Thus we occasionally find the latter, either alone or in conjunction with the bishop, presiding in the shiremoot without the sheriff.[1] It may be asked: Who executed the decision of the court if no sheriff were present? The answer is, that the ealdorman (earl) had other officers to carry out his sentences. The generic and perhaps untechnical term for such deputies was *gingra*, which is translated by "junior." Thus this official appears twice in charters of the first half of the ninth century,[2] and once in the laws, where he is represented as holding pleas.[3] But in an ideal view of the just judge, written at the beginning of the eleventh century, the *gingra* appears in the light of a well-known institution.[4] Whenever the sheriff was present, he himself most likely executed the sentence of the court; but we have already shown that he was not necessarily present. There is sufficient evidence, of course, of the presence of the sheriff beside the regular officers of the shire court, the ealdorman and bishop.[5] Whenever we do not find the ealdorman (earl) in his accustomed place, the inference is that the sheriff sat in the shiremoot in his *stead*,[6] as suggested above. The reeve (gerefa), of which the sheriff (scir-gerefa) was a species, appears to have

[1] Kemble, C. D., VI, 1334; III, 693; IV, 898. Earle, Handbook, p. 242. In the third case the ealdorman seems to have presided alone.

[2] Kemble, C. D., II, 250 (charter of Berhtuulf, A. D. 841): Liberabo ab omnibus sæcularibus servitutibus magnis vel modicis notis et ignotis regis et principis vel *iuniorum eorum*. *Ibid.*, 258 (Berhtuulf, A. D. 845): Soluta et liberata sit. . . . ab opere regis et pastu regis et principis vel *iuniorum eorum*. . . . Dr. Stubbs cites a third case (C. H., I, p. 116, n. 6), but this is identical with the first. That a sheriff could also have his "gingran," appears from the Institutes of Polity, written after the death of King Eadgar, 975. Thorpe, Laws, *etc.*, II, p. 314.

[3] Ælfred, 38, § 2. If anything of this sort happen before the king's ealdorman's officer (*gingra*), xxx shillings as wite.

[4] F. Liebermann: Vom Gerechten Richter: *Zeitschr. für Rechtsgesch.*, V, p. 209 [8]. An ealdorman shall not choose unto himself ignorant judges nor unrighteous officers (*geongran*); p. 210 [10]. Often good judges have evil and robbing officers (*gingran*).

[5] Kemble, C. D., IV, 802, 755; VI, 1337; III, 693. *Cf.* next note.

[6] *Ibid.*, IV, 929; III, 693, if we may identify Alfgar "cyninges gerefa" with the scirgerefa; IV, 732.

been under the control and moral influence of the bishop, inasmuch as the latter is bidden to collect the fines incurred by the delinquent reeve.[1] The bishop, indeed, seems in Cnut's time to have been the chief source of authority in the shiremoot. Not only in looking after the execution of divine right, but also in taking care of the rights of the king, he was to be *assisted* by the ealdorman.[2] He primarily was to declare (*tæcan*) the law, secular and spiritual; in case of need the earl (ealdorman) was then to lend the force of the secular arm.[3] Again, we read in the unofficial *Institutes of Polity*, composed after 975, that the bishop shall in accusations direct the purgation so that no man may wrong another, either in oath or ordeal[4] — a function which pertained to him, indeed, in virtue of his spiritual office. The preëminent position of the bishop in the shiremoot is easily explained by his greater moral weight and his undoubtedly better knowledge of the law.

From the above we may draw the following conclusions: The shiremoot dealt chiefly, if not exclusively, with civil pleas. The presiding officers were the shire-bishop and the ealdorman, with or without the sheriff, who, if present, was probably the "constituting officer." As to actual judicial authority, it seems, at least in the time of Cnut, to have lain chiefly in the hands of the bishop, who was assisted by the secular arm of the ealdorman (earl) and the executive power of the latter or his deputy, whether a sheriff or other officer.

The suitors of the county court, says Dr. Stubbs, were the

[1] Æthelstan, II, 26, 1; *cf.* Eadg., III, 3. In Cnut's charter (*circ.* 1020) we read ". . . eac ic beode eallum minum gerefum . . . þæt hy æghwær . . . rihte domas deman *be ðære scira b[isceopes] gewitnesse* and swylce mildheortnesse þæron don *swylce þære scire b[isceopes] riht þince.*" Earle, Handbook, p. 230.

[2] "And eac *minum ealdormannum* ic beode þæt hy *fylstan þam b[iscopum]* to Godes gerihtum *and to minum kynescype.*" Earle, p. 230; Stubbs, S. C. p. 75.

[3] "Gif hwa swa dyrstig sy, gehadode oððe læwede, Denisc oððe Englisc, þæt ongean Godes lage ga *and ongean mine cynescype oððe ongean worold riht* and nelle betan and geswican *æfter minra b[isceopa] tæcinge, þon[ne]* bidde ic þurcyl eorl . . . *þæt he ðæne* unrihtwisan to rihte gebige gyf he mæge." Earle, p. 230; Stubbs, S. C., pp. 75, 76. Here *tæcan* is evidently used in the same sense as in Eadg., I, 7; *cf.* Cn. II, 18.

[4] Thorpe, Ancient Laws, II, p. 312, chap. vii.

same as those of the hundred court: all lords of lands, all public officers, and from every township (the parish priest) the reeve and four men.[1] The lords of lands, he says, were called in this aspect, scir-thegns. But this designation does not seem to have had any *technical* meaning. The "thegns" of Herefordshire, for instance, had the same status in their shiremoot as the "scir-thegns" of Hampshire in theirs. If there had been a difference, why should the address of writs invariably run in the name of the "thegns" of such and such a shire? Furthermore, in the witness clause of the writs the expression "all the thegns"[2] occurs much oftener than "all the scir-thegns."[3] How many of these thegns, or lords of lands, were in the habit of coming to court, the sources do not permit us to say. Still it will be conceded that suit of court was considered less a right than a duty.[4] Who are meant by "all the public officers" is not clear. Finally, the authority for the statement that the parish priest, the reeve, and the four men of every township sat in the shiremoot, appears scanty at best.[5] It is based on a passage in the private legal compilation called The Laws of Henry I,[6] and this Dr. Stubbs has misinterpreted. What the law really says is, that in the county court (1) the lord may answer for his land himself; (2) his steward may answer in his stead; (3) *if neither of them could be present*, then the reeve, the priest, and four of the better sort of the township *might answer* for the vill themselves.[7] Besides, had this deputation sat *regularly* in the shiremoot, why is the plain reeve, or gerefa, never mentioned in the address of the writs?[8]

[1] Stubbs, I, p. 128. *Cf.* I, p. 115.

[2] Kemble, C. D., IV, 785, 728, 789, 802, 821 *et passim*.

[3] This phrase occurs only three times: *ibid.*, IV, 820, 949; VI, 1337.

[4] F. W. Maitland (*English Historical Review*, III, pp. 417–421) has clearly shown this for Anglo-Norman times, and it was probably the same before the Conquest.

[5] What Dr. Stubbs (I, p. 128, n. 4) cites from Domesday is not to the point. *Cf.* W. J. Ashley, "The Anglo-Saxon Township," *Quart. Journ. Econ.*, VIII, 3, p. 361, n. *

[6] Leges H., I, c. 7, § 9; *cf.* § 8.

[7] J. H. Round: "The Suitors of the County Court," *Archæol. Rev.*, II, p. 67.

[8] But this may perhaps be because he was generally a villein. J. H. Round, Domesday Studies, II, p. 551, speaks of a writ of Henry I addressed to the

Dr. Stubbs himself concedes that the point is left questionable in the laws, but holds that it is proved by later practice. For this the usage under Henry III is appealed to. The four law-worthy men of every township in Henry II's Assizes of Clarendon and Northampton, chap. 1, might also have been cited in this connection. But such late data ought to be used only with great caution, as secondary evidence. Still, may we not, without relying too much on the argument of "archaic survivals,"[1] assume with tolerable certainty that the author of the so-called Laws of Henry I had inaccurately expressed an Anglo-Saxon idea of popular representation, such as appears in the oath of "totius centuriatus, presbiteri, praepositi, vi villanorum uniuscuiusque villae" in furnishing the returns for the Domesday Survey of Ely?[2] At any rate, I cannot but think that such popular deputations may under certain conditions have existed before the Conquest, and that the Conqueror was politic enough in this as in other cases, to adapt, if not to adopt, an existing institution. The lords of land continued as before to comprise the landed or feudal element, the judges of the county court, whereas the people of the townships occasionally formed the representative element.[3]

"reeves" of Sussex. But the "*omnes ministri*" mentioned here more likely correspond to the "*calla þegnas*" of the Old English writs of Eadward the Confessor, who, in fact, sometimes appear as "*ministri*" in their Latin dress. See Kemble, C. D., IV, 833, 853, 867, 903, 904, 906.

[1] See on this point W. J. Ashley, *op. cit.*, p. 361.

[2] Domesday Book, IV, f. 497. Stubbs, S. C., p. 86.

[3] J. H. Round, *l. c.*, p. 68. Dr. Stubbs (I, p. 128, n. 4), to illustrate the participation of the popular element, the ceorls, in the shiremoot, cites some charters. In the first (Kemble, IV, 732) occurs the phrase, "Ðyssa þinga is gecnæwe ælc dohtig man on Kænt and on Suð Sexan on þegenan and on ceorlan" (of these things are aware all the doughty men of Kent and Sussex, both thanes and ceorls). But does it follow that they were present at a court held in Canterbury? The phrase seems rather a formula expressing general assent. *Cf.* Kemble, VI, 1288. Dr. Stubbs also calls attention to the direction of royal writs to the thegns of the shire, "twelf hynde and twyhynde" (Kemble, IV, 731; Earle, pp. 229–232). Only the former of the documents cited is, properly speaking, a writ. The other is Cnut's policy of government, which naturally enough would be directed to all his officials and to the people at large. Moreover, the ceorl is not mentioned by name in either of the documents; and the twyhyndeman, who is mentioned, had the same status as the ceorl according to a compilation of Mercian laws only (Schmid, App., VII, c. 1, § 1; c. iii, § 1). Are we, then, justified in considering the ceorl as regularly identical with the twyhyndeman?

III.

The jurisdiction and organization of the hundred court have received more satisfactory treatment than those of the shire court. Still there is room for correction. The hundred court, say the laws, could declare folk-right in every suit. It seems to have been the unit of the judicial system. It was to meet every month; the summons to the litigants was to be issued seven nights before. A threefold contempt of summons on the part of the accused brought confiscation on the culprit.[1] Every one was, in the first instance, there to seek suit. If, however, the shiremoot dealt chiefly with the more important suits about land, it seems reasonable to suppose that the lesser civil cases,[2] and particularly the constantly recurring criminal offenses, would be left to the hundred court, where meetings were more frequent, and hence decisions more speedy.

Who was the presiding officer and what was the composition of the hundred court? The question has been vaguely answered. Dr. Stubbs justly doubts whether the ealdorman of the shire, the sheriff, or the bishop sat regularly in the hundred court at any period.[3] The large number of hundreds in some shires would make it impossible for those officers to attend each of the monthly meetings. Besides, the ealdorman, as civil and military head of his shire, and the bishop, as the spiritual chief, would be fully occupied with their own duties.[4] The sheriff, on the other hand, seems at times to have been the presiding officer of the hundred. The laws are silent on this point, but there is a writ of Eadward the Confessor in which the sheriff figures as one of the regular holders of the hundred

[1] Eadgar, I, c. 7. Æthelstan, II, § 20. Eadgar, III, c. 7; *cf.* Cn., II, 25.

[2] To my knowledge, we have only one illustration, and that is a mere reference, of the judicial powers of the hundred court in the Anglo-Saxon charters (Thorpe, p. 427, *circ.* 1066). The following extract from Domesday may refer to an actual decision of the hundred court: "In eadem villa idem invasit iii virgatas terrae super regem . . . *per judicium hundred.*" Domesday, II, f. 99.

[3] Stubbs, I, p. 116.

[4] Still, in the ordinance of William I separating the spiritual and temporal courts, the bishop or archdeacon appears as holding pleas in the hundred court in spiritual cases. Stubbs, Select Charters (4th ed.), p. 85.

court.[1] Furthermore, an officer called [ge]motgerefa appears in this writ as a functionary of the hundred court. Gerefa, or reeve, was apparently the generic term for a class of officials one of whose duties was to preside at this court. Of this class, the scir-gerefa, or sheriff, was a species which took its distinctive title from its connection with the court of the shire, though its activity was not necessarily restricted to this. If the ealdorman had his deputies, or *gingra*, we may suppose that the reeves, who were much more frequently called upon to preside at a court, also had theirs.[2]

As to the suitors of the hundred court in Anglo-Saxon times, we have no direct evidence. What has been said on this point in regard to the court of the shire, applies equally to the hundred court. It is indeed likely that many of the land-holders had already in Anglo-Saxon times acquired that immunity from attendance at the hundred and shire courts, which so many of them enjoyed after the Conquest.

To sum up: The hundred court of Anglo-Saxon times was the judicial unit, deciding in both civil and criminal pleas. Its presiding officer was taken from a class of officials called reeves, and its suitors were the same as those of the larger local court, the shiremoot.

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[1] Kemble, C. D., III, 840. The king grants Hornemere hundred to Abingdon, "so that no sheriff or moot reeve have there any investigation or court unless at the abbot's bidding and wish." *Ibid.*, IV, 850, in which the *sheriff* is commanded not to levy distress within a certain hundred without the consent of the abbot, is suspicious, on account of the unheard-of title of the king — "Eadward cing ofer Engleðeod."

[2] *Supra*, p. 139, note 2. It is possible that the hundredes man, or hundredes-ealdor, was the presiding officer of the hundred court, under another and popular name. At any rate, he was the police officer of the hundred, according to Eadgar's constitution of the hundred.